

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
JOHN R. CARTER, Texas
TOM FEENEY, Florida
MARSHA BLACKBURN, Tennessee

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

March 10, 2003

Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

We are writing to you regarding H.R. 21, the "Unlawful Internet Gambling Funding Prohibition Act," which was introduced by Rep. Leach, and which was referred to the House Committee on Financial Services and sequentially to the Committee on the Judiciary. It has been reported that the Financial Services Committee intends to mark up H.R. 21 as early as March 13. We are writing to request that the Judiciary Committee exercise its right to a sequential referral of the legislation, and that the regular order be followed, including holding a hearing, subcommittee markup, and full committee markup.

Gambling law and enforcement have been within the jurisdiction of the Judiciary Committee since this Committee was created. We applaud your efforts to prevent erosion the Judiciary Committee's jurisdiction, and we urge you to ensure that the Financial Services Committee does not encroach on jurisdiction that this Committee has fought hard to protect in the past.

We believe that the regular order for H.R. 21 is warranted for several reasons. First, as you are aware, in the 107th Congress, the Judiciary Committee was granted a sequential referral on a similar bill, H.R. 556, and the Committee held a hearing and markups on a related bill, H.R. 3215. It is important to note that H.R. 21 is significantly different from both H.R. 556 and H.R. 3215 in the 107th Congress. As of yet, H.R. 21 has never been the subject of a hearing or markup in *any* Committee.

Second, during the Judiciary Committee's consideration of H.R. 3215 in the 107th Congress, the Committee resoundingly voted against picking and choosing among different types of Internet gambling. As you recall, although the original bill singled out certain gambling industries for special treatment, the Committee overwhelmingly adopted amendments to strike

Honorable F. James Sensenbrenner, Jr.
Page Two
March 10, 2003

those carve-outs. H.R. 21 contains exemptions that are similar in scope to those that the Committee rejected in the 107th Congress. For example, H.R. 21 exempts from the definition of “bets or wagers” “any lawful transaction with a business licensed or authorized by a State.”¹ The Committee should have the opportunity to work its will on H.R. 21 in the same fashion that the Committee reviewed H.R. 3215 in the 107th Congress.

Third, it is increasingly unclear what the effects of H.R. 21 would be, and how law enforcement would be impacted. Among other things, H.R. 21 prohibits individuals from using a credit card or other financial instruments to make “unlawful” Internet gambling wagers. Supporters of H.R. 21 argue that the bill is needed to help law enforcement crack down on money laundering by terrorists and other criminal enterprises. Yet, a persuasive case can be made that H.R. 21 will actually make it *more difficult* for law enforcement to prevent money laundering because people will simply use cash and offshore bank accounts to conduct their Internet gambling activities. The question of the bill’s impact on law enforcement falls squarely within the Judiciary Committee’s jurisdiction, and has never been addressed in the Committee’s previous hearings or markups.

Fourth, a recent decision by the Court of Appeals for the Fifth Circuit has raised significant questions about the scope and breadth of the Wire Act,² the primary federal criminal statute that addresses interstate wagers. Last year, the Fifth Circuit held that the Wire Act applies only to sports wagering – not casino-style or other types of gambling – as the Department of Justice has maintained, and continues to maintain.³ The legal ambiguity surrounding the Wire Act is exacerbated by H.R. 21, which simply prohibits the use of a credit card or other financial instruments to participate in “unlawful” Internet gambling.

Fifth, the Internet gambling landscape is changing. While it is true that at one time, the majority of dollars wagered online were processed at servers in the Caribbean, licensing regimes in Canada, the U.K., and Australia are rapidly overtaking the Caribbean operations. Large U.S. gaming companies such as MGM-Mirage and Station Casinos are now accepting Internet bets on the Isle of Man in the United Kingdom.

U.S. states and territories are proceeding with plans in this area as well. Nevada has passed a bill authorizing its gaming commission to promulgate regulations for licensing the acceptance of on-line wagers; however, the commission largely abandoned its efforts after

¹H.R. 21, Sec. 3(b)(1)(E)(ix).

²18 U.S.C. § 1084.

³ *Thompson v. Mastercard Int’l Inc.*, 313 F.3d 257 (5th Cir. 2002).

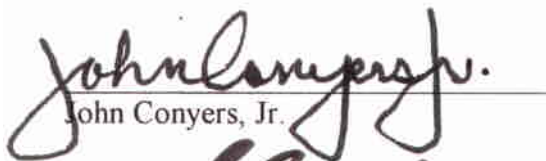
Honorable F. James Sensenbrenner, Jr.
Page Three
March 10, 2003


receiving a letter from the Department of Justice saying that this would violate the Wire Act. (The Department issued this letter prior to the Fifth Circuit ruling referenced above.) New Jersey is expected to pass similar legislation this year, and the U.S. Virgin Islands are in the process of licensing companies to accept Internet wagers. It is not clear how the Leach bill would affect these State and Territorial efforts.

Finally, Mr. Conyers will soon be reintroducing a new version of H.R. 5760 from the 107th Congress. This bill would establish a national Internet Gambling Licensing and Regulation Study Commission to examine whether issues such as money laundering, underage gambling, and problem gamblers are better addressed through ineffective attempts to prohibit Internet gambling or by a system where the States can choose to license and regulate online gaming with strict controls. We hope that the Committee's consideration of H.R. 21 would also include a consideration of this legislation, which we believe provides important new perspectives on the Internet gambling industry that have not yet been examined by the Judiciary Committee.

In light of all the foregoing, we urge you to protect this Committee's prerogatives and seek a sequential referral period which is sufficient for us to examine all of these issues.

Sincerely,


John Conyers, Jr.


Robert C. Scott


Robert Wexler


Howard L. Berman


Melvin L. Watt